

1 ROBERT L. GOLDSTEIN (CSBN 184226)
2 CINDY L. HO (CSBN 227226)
3 LAW OFFICES OF ROBERT L. GOLDSTEIN
4 100 BUSH STREET, SUITE 501
5 SAN FRANCISCO, CA 94104
6 Telephone: (415) 391-8710 EXT. 107
7 Facsimile: (415) 391-8701

8 ATTORNEYS FOR JESUS MARQUEZ,
9 OLGA MARQUEZ, RAMON MARQUEZ,
10 JUANITA MARQUEZ,
11 TAQUERIA LOS PRIMOS, and
12 TAQUERIA LOS PRIMOS NO. 2

13 UNITED STATES DISTRICT COURT FOR THE
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 UNITED STATES OF AMERICA,) Case No.: CV 08 0891
17)
18 Plaintiff,) DEFENDANTS JESUS MARQUEZ,
19) OLGA MARQUEZ, RAMON MARQUEZ,
20 vs.) JUANITA MARQUEZ,
21) TAQUERIA LOS PRIMOS, AND
22) TAQUERIA LOS PRIMOS NO. 2'S
23) ANSWER
24 JESUS MARQUEZ, OLGA MARQUEZ,)
25)
26 RAMON MARQUEZ, JUANITA MARQUEZ,)
27)
28 TAQUERIA LOS PRIMOS, and)
TAQUERIA LOS PRIMOS NO. 2,)
Defendants)

29 COMES NOW the Defendants, Jesus Marquez, Olga Marquez,
30 Ramon Marquez, Juanita Marquez, Taqueria Los Primos, and
31 Taqueria Los Primos No. 2, deny any and all such allegations,
32 and further admit or deny the specific allegations of the
33 Complaint and states affirmative defenses, as follows:

COUNT I

JURISDICTION AND VENUE

1. Defendants admit the allegations of the nature of the case in paragraph 1.

2. Defendants admit the allegations of subject matter jurisdiction in paragraph 2.

3. Defendants admit the allegations of personal jurisdiction of paragraph 3.

4. Defendants admit the allegations of venue of paragraph 4.

COUNT II

IDENTIFICATION OF DEFENDANTS

5. Defendants, Jesus and Olga Marquez, admit that they reside in this District, as alleged in paragraph 5.

6. Defendants, Ramon and Juanita Marquez, admit that they reside in this District, as alleged in paragraph 6.

7. Defendant Taqueria Los Primos, a partnership, admits that it resides in this District, as alleged in paragraph 7.

8. Defendant Taqueria Los Primos No. 2, a partnership, admits that it resides in this District, as alleged in paragraph 8.

9. Defendants admit that the real property subject of this foreclosure is located in this District, as alleged in

1 paragraph 9.

2 10. Answering paragraph 10 of the Complaint, Defendants
3 lack information sufficient to form a belief as to the facts
4 alleged, and on that basis, Defendants deny them.

5 11. Defendants lack information sufficient to deny or
6 admit the allegation where Defendant Bank of America is
7 authorized to do business and its designated agent for service
8 of process, as alleged in paragraph 11. Defendants admit that
9 Defendant Bank of America may claim an interest in property
10 described in paragraph 11.
11

12 12. Answering paragraph 12 of the Complaint, Defendants
13 lack information sufficient to form a belief as to the facts
14 alleged, and on that basis, Defendants deny them.
15

16 13. Answering paragraph 13 of the Complaint, Defendants
17 lack information sufficient to form a belief as to the facts
18 alleged, and on that basis, Defendants deny them.
19

20 14. Answering paragraph 14 of the Complaint, Defendants
21 lack information sufficient to form a belief as to the facts
22 alleged, and on that basis, Defendants deny them.
23

24 15. Answering paragraph 15 of the Complaint, Defendants
25 lack information sufficient to form a belief as to the facts
26 alleged, and on that basis, Defendants deny them.

27 16. Answering paragraph 16 of the Complaint, Defendants
28

1 lack information sufficient to form a belief as to the facts
2 alleged, and on that basis, Defendants deny them.

3 **COUNT III**

4 **RESPONSE REDUCE TO JUDGMENT ASSESSMENTS AGAINST JESUS AND OLGA**
5 **MARQUEZ**

6 17. Paragraphs 1 - 16 are incorporated by reference.

7 18. Defendants admit the allegations in paragraph 18.

8 19. Defendants are without sufficient information to admit
9 or deny the allegations of timely notice and demand for payment
10 of the assessments described in paragraph 18, and therefore deny
11 them. Defendants further deny the allegation that Defendants
12 have "neglected, failed, or refused to pay the assessments"
13 described in paragraph 18. To the extent that the statements in
14 paragraph 19 refer to any allegations of improper, or otherwise
15 wrongful conduct on the part of Jesus and Olga Marquez, the
16 allegations are denied.
17
18
19

20 **COUNT IV**

21 **RESPONSE REDUCE TO JUDGMENT ASSESSMENTS AGAINST RAMON AND**
22 **JUANITA MARQUEZ**

23 20. Paragraphs 1 - 19 are incorporated by reference.

24 21. Defendants admit the allegations in paragraph 21.

25 22. Defendants are without sufficient information to admit
26 or deny the allegations of timely notice and demand for payment
27 of the assessments described in paragraph 21, and therefore deny
28

1 them. Defendants further deny the allegation that Defendants
2 have "neglected, failed, or refused to pay the assessments"
3 described in paragraph 21. To the extent that the statements in
4 paragraph 22 refer to any allegations of improper, or otherwise
5 wrongful conduct on the part of Ramon and Juanita Marquez, the
6 allegations are denied.
7

8 **COUNT V**

9 **RESPONSE REDUCE TO JUDGMENT ASSESSMENTS AGAINST TAQUERIA LOS**
10 **PRIMOS**

11 23. Paragraphs 1 - 22 are incorporated by reference.

12 24. Defendant admits the allegations in paragraph 24.

13
14 25. Defendant Taqueria Los Primos, a partnership, and its
15 partners, Jesus Marquez and Ramon Marquez , are without
16 sufficient information to admit or deny the allegations of
17 timely notice and demand for payment of the assessments
18 described in paragraph 24, and therefore deny them. Defendants
19 further deny the allegation that Defendants have "neglected,
20 failed, or refused to pay the assessments" described in
21 paragraph 24. To the extent that the statements in paragraph 25
22 refer to any allegations of improper, or otherwise wrongful
23 conduct on the part of Taqueria Los Primos, the allegations are
24 denied.
25
26

27 //
28

COUNT VI

RESPONSE REDUCE TO JUDGMENT ASSESSMENTS AGAINST TAQUERIA LOS PRIMOS NO. 2

26. Paragraphs 1 - 25 are incorporated by reference.

27. Defendant admits the allegations in paragraph 27.

28. Defendant Taqueria Los Primos No. 2, a partnership, and its partners, Jesus Marquez and Ramon Marquez, are without sufficient information to admit or deny the allegations of timely notice and demand for payment of the assessments described in paragraph 27, and therefore deny them. Defendants further deny the allegation that Defendants have "neglected, failed, or refused to pay the assessments" described in paragraph 27. To the extent that the statements in paragraph 28 refer to any allegations of improper, or otherwise wrongful conduct on the part of Taqueria Los Primos No. 2, the allegations are denied.

COUNT VII

RESPONSE FORECLOSURE FEDERAL TAX LIENS

29. Paragraphs 1 - 28 are incorporated by reference.

30. Defendants, Jesus and Olga Marquez, admit allegations in paragraph 30. However, Defendants deny allegations to the extent that the statements in paragraph 30 refer to any allegations of neglect or refusal to pay the assessments described in paragraph 18.

1 31. Defendants, Jesus and Olga Marquez, generally believe
2 the assertions of paragraphs 18 and 31 to be true, and reserve
3 the right to admit or deny any related assertions which might
4 subsequently be asserted by the government.

5 32. Defendants, Ramon and Juanita Marquez, admit
6 allegations in paragraph 32. However, Defendants deny
7 allegations to the extent that the statements in paragraph 32
8 refer to any allegations of neglect or refusal to pay the
9 assessments described in paragraph 21.
10

11 33. Defendants, Ramon and Juanita Marquez, generally
12 believe the assertions of paragraphs 21 and 33 to be true, and
13 reserve the right to admit or deny any related assertions which
14 might subsequently be asserted by the government.
15

16 34. Defendant Taqueria Los Primos, a partnership, and its
17 partners, Jesus Marques and Ramon Marquez, admit allegations in
18 paragraph 34. However, Defendant denies allegations to the
19 extent that the statements in paragraph 34 refer to any
20 allegations of neglect or refusal to pay the assessments
21 described in paragraph 24.
22

23 35. Defendant Taqueria Los Primos, a partnership, and its
24 partners, Jesus Marquez and Ramon Marquez, generally believe the
25 assertions of paragraphs 24 and 35 to be true, and reserve the
26 right to admit or deny any related assertions which might
27 subsequently be asserted by the government.
28

1 36. Defendant Taqueria Los Primos No. 2, a partnership,
2 and its partners, Jesus Marques and Ramon Marquez, admit
3 allegations in paragraph 36. However, Defendant denies
4 allegations to the extent that the statements in paragraph 36
5 refer to any allegations of neglect or refusal to pay the
6 assessments described in paragraph 27.

7
8 37. Defendant Taqueria Los Primos No. 2, a partnership,
9 and its partners, Jesus Marquez and Ramon Marquez, generally
10 believe the assertions of paragraphs 27 and 37 to be true, and
11 reserve the right to admit or deny any related assertions which
12 might subsequently be asserted by the government.

13
14 38. Defendants admit the allegations in paragraph 38.

15
16 **AFFIRMATIVE DEFENSES**

17 FIRST AFFIRMATIVE DEFENSE

18 SEIZURE IS NOT A REASONABLE ALTERNATIVE FOR COLLECTION BECAUSE
19 EQUITY IN THE PROPERTY IS INSUFFICIENT TO SATISFY THE LIABILITY

20 39. Pursuant to 26, United States Code, Sections 6331(j),
21 prior to seizure, Plaintiff must implement a thorough
22 investigation establishing that there is sufficient equity from
23 the sale real property described in paragraph 9 of the Complaint
24 to satisfy the tax liability.

25
26 40. Defendants believe that the fair market value of the
27 residence described in paragraph 9 of the Complaint has
28 significantly declined since the last professional appraisal

1 performed on April, 14 2005. Accordingly the equity in this
2 residence, in a sale, is believed to be insufficient to satisfy
3 assessments described in paragraphs 18, 21, 24, and 27 of the
4 Complaint.
5

6 SECOND AFFIRMATIVE DEFENSE

7 REASONABLE ALTERNATIVES FOR COLLECTION EXISTS

8 41. Pursuant to Treasury Regulations, Subchapter F,
9 Section 301.6334-1(d)(1), Plaintiff must establish that there
10 are no other reasonable alternatives for collection of the tax
11 liabilities.
12

13 42. Defendants allege that a reasonable alternative for
14 collection is to allow the Defendants to pursue a home loan or
15 refinance. If successful, Defendants would forward all loan
16 proceeds to Plaintiff which would substantially reduce the
17 assessments described in paragraphs 18, 21, 24, and 27 of the
18 Complaint.
19

20 43. Further, seizure of the home residence is against
21 public policy in light of the reasonable alternative to
22 collection stated above in paragraph 42. Especially, when
23 considering that Defendants, Jesus and Olga Marquez and Ramon
24 and Juanita Marquez, including their four children would be
25 homeless if seizure of the real property was granted.
26
27

28 //

1 WHEREFORE, Defendants pray this Honorable Court for the
2 following relief:

3 1. For a finding that Plaintiff has failed to fully
4 investigate and establish that foreclosure of real property
5 described in paragraph 9 of the Complaint would sufficiently
6 satisfy Defendants' unpaid federal liabilities;
7

8 2. For a finding that Plaintiff has failed to show that
9 there are no other reasonable alternatives to collection of
10 Defendants' unpaid federal liabilities;
11

12 3. For dismissal of the Plaintiff's action with
13 prejudice; and
14

15 4. For such further and other relief and the Court deems
16 fair and just.
17
18
19

20 Dated this 11th day of March, 2008

21 /S/ CINDY L. HO
22

23 CINDY L. HO
24 (CSBN 227226)
ROBERT L. GOLDSTEIN
(CSBN 184226)

25 THE LAW OFFICES OF ROBERT L. GOLDSTEIN
26 100 BUSH STREET, SUITE 501
27 SAN FRANCISCO, CA 94104
28

VERIFICATION

I, Cindy L. Ho, am an attorney for the Defendant in the above-entitled action. I have read the foregoing *Answer* and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at San Francisco, California.

Dated this 11th day of March, 2008

/S/ CINDY L. HO

CINDY L. HO
(CSBN 227226)
ROBERT L. GOLDSTEIN
(CSBN 184226)

THE LAW OFFICES OF ROBERT L. GOLDSTEIN
100 BUSH STREET, SUITE 501
SAN FRANCISCO, CA 94104